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OFFICE OF PETITIONS

In re Application of :
Larren F. Jones, Robert E. :
McClanahan, and Hezekiah R. :
Holland :
Application No. 09/368,503 : DECISION ON RENEWED PETITION
Filed: August 5, 1999 : PURSUANT TO
Attorney Docket No. 51291.81516 : 37 C.F.R. § 1.183
Title: WEAR ASSEMBLY FOR A :
DIGGING EDGE OF AN EXCAVATOR :

This is in response to the renewed petition pursuant to 37 C.F.R. § 1.183, filed June 23, 2010. A duplicate copy of this submission was received on September 7, 2010. Petitioner seeks the waiver of 37 C.F.R. §§ 1.42 and 1.63(a)(1).¹

This renewed petition is **GRANTED**.

The present application is for the reissue of U.S. Patent number 5,653,048, which issued on August 5, 1997, from application number 08/554,158.

It is noted that both the written consent to the reissue by the Assignee and a statement under 37 C.F.R. § 3.73(b) were included on filing.

On August 5, 1999, the present reissue application was filed, identifying Larren F. Jones, Robert E. McClanahan, and Hezekiah R. Holland as joint inventors. A fully-executed reissue

¹ See MPEP § 603: "[w]hen an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, the requirement for that inventor to sign the supplemental declaration may be suspended or waived in accordance with 37 CFR 1.183."

declaration was included on filing. On October 27, 2008, a final Office action was mailed, which included an indication that the reissue declaration is defective and that a supplemental reissue declaration would be required.

A notice of appeal was filed on April 27, 2009, along with a three month extension of time and the associated fee. An original petition pursuant to 37 C.F.R. § 1.183 was filed on July 27, 2009 along with, *inter alia*: a Request for Continued Examination and the associated fee, along with the surcharge associated with the late submission of an oath or declaration, the last known address of one of the legal representatives of deceased non-signing joint inventor Jones, and a supplemental reissue declaration that has been executed by Messrs. McClanahan and Holland, as well as the brother of the deceased joint inventor. The original petition was dismissed via the mailing of a decision on April 23, 2010.

With this renewed petition, Petitioner has submitted, *inter alia*, several statements of fact, a copy of a letter, the last-known address of Jeffrey Jones, and a supplemental reissue declaration that has been executed by Robin Morton, Jennifer Harp, and Randall Jones. The remaining two legal representatives of the deceased inventor, Patrick and Jeffrey Jones, have not executed this supplemental reissue declaration.

The address for Patrick Jones which appears on the second page of this renewed petition will serve as the last known address for this individual.

Petitioner has established that a diligent effort has been made to locate the two non-signing legal representatives of the deceased inventor.

With this renewed petition, Petitioner has asserted the existence of an extraordinary situation where justice requires waiver of the rules.²

The renewed petition is granted to the extent that the supplemental reissue declaration of June 23, 2010 may be entered, despite the fact that the requirement that all of the inventors sign the declaration has not been satisfied. **This is not a decision on the merits of the declaration.**

² The \$400 petition fee will be charged to Deposit Account No. 19-0733 in due course, as authorized on the first page of this renewed petition.

The Technology Center will be notified of this decision.

Telephone inquiries regarding *this decision* should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.³ All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Hiram Bernstein/

Hiram Bernstein
Senior Legal Advisor
Office of Patent Legal Administration

³ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).